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10/807,695	03/24/2004	Ali Nilforushan	8048-002-US	4408

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EXAMINER	
NGUYEN, SON T	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Due Date 10/6/05
1st Extension
2nd Extension
Final Due Date
Dkt #2 Confirmed
Atty Confirmed

Office Action Summary	Application No.	Applicant(s)	
	10/807,695	NILFORUSHAN, ALI	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *4/29/05*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1,2,4,5,7,8,10,12,16-18,20,21,23,25** are rejected under 35 U.S.C. 102(b) as being anticipated by Beeghly et al. (US 5537954).

For claim 1, Beeghly et al. teach an animal cover 10 comprising a body 12 having an interior and exterior side; a plurality of cavities 14,21,22,20,34 strategically located within the body; and a temperature altering device 40.

For claims 2 & 4, Beeghly et al. teach the cavities are located in the area as shown in the figures.

For claims 5 & 7, Beeghly et al. teach the temperature altering device being removably located within the cavities (col. 5, lines 52-67).

For claim 8, Beeghly et al. teach the cavities form a sealable pocket by snaps 36.

For claim 10, Beeghly et al. teach the altering device is removed from the cover and is brought to a desired temperature by placing the altering device in a heated environment until the altering device reaches a desired temperature and can be returned to the cover and used to deliver a temperature altering regimen to an animal (col. 5, lines 52-68 and col. 6, lines 1-39).

For claim 12, Beeghly et al. teach the cavities further comprise a material on the exterior side of the body of the cover that will reflect the temperature emitted from the altering device towards the body of the animal for maximum efficiency of temperature transfer (col. 5, lines 35-42).

For claim 16, Beeghly et al. teach the animal being a dog.

For claim 18, Beeghly et al. teach a method for delivering a temperature altering regimen comprising the steps of altering the temperature of a temperature altering device 40 located within the body of an animal cover 12 having a temperature altering device 40 and being designed and fitted to deliver a temperature altering regimen to specific areas of an animal's body; placing the cover on the body of an animal; allowing a temperature altering regimen to run its course.

For claim 20, Beeghly et al. teach removing the altering device 40 from the cover, placing the altering device in a heating environment (col. 6, lines 1-39), allowing the altering device to reach a desired temperature (col. 6, lines 1-39), and replacing the altering device into the cover (col. 6, lines 1-39).

For claim 21, Beeghly et al. teach adjusting and properly aligning the cover on the animal so as to allow the altering device to work properly.

For claim 23, Beeghly et al. teach letting the altering device deliver temperature to the animal's body for an optimally defined period of time (col. 5, lines 52-68).

For claim 25, Beeghly et al. teach the animal being a dog.

3. **Claims 1-5,7,16-18,21,23,25,26** are rejected under 35 U.S.C. 102(b) as being anticipated by DE 20021260U1 (herein DE260).

For claim 1, DE260 teaches an animal cover 1 comprising a body having an interior and exterior side; a plurality of cavities 2 strategically located within the body; and a temperature altering device (the heat pad discussed in the Abstract).

For claims 2-4, DE260 teaches the cavities are located in the area as shown in the figures.

For claims 5 & 7, DE260 teaches the temperature altering device being removably located within the cavities (see Abstract).

For claim 16, DE260 teaches the animal being a horse.

For claim 17, DE260 teaches the cover being a horse blanket 1 and the animal being a horse.

For claim 18, DE260 teaches a method for delivering a temperature altering regimen (heat pad) comprising the steps of altering the temperature of a temperature altering device (heat pad) located within the body of an animal cover 1 having a temperature altering device (heat pad) and being designed and fitted to deliver a temperature altering regimen to specific areas of an animal's body; placing the cover on the body of an animal; allowing a temperature altering regimen to run its course.

For claim 21, DE260 teaches adjusting and properly aligning the cover on the animal so as to allow the altering device to work properly.

For claim 23, DE260 teaches letting the altering device deliver temperature to the animal's body for an optimally defined period of time.

For claim 25, DE260 teaches the animal being a horse.

For claim 26, DE260 teaches the cover being a horse blanket 1 and the animal being a horse.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. **Claims 6,9,11,19,22,24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. (as above).

For claim 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the altering device be permanently located in the cavities of the cover of Beeghly et al., depending on the user's preference to do so by not taking the altering device out or by permanently attaching the device in the cavities.

For claim 9, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the entire cover of Beeghly et al. in the heated environment, depending on the user's preference to do so if he/she does not wish to remove the altering device from the pocket.

For claim 11, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the cover of Beeghly et al. out of a wick material to wick moisture, since it has been held to be within the general skill of a

worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 19, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of placing the entire cover of Beeghly et al. in the heated environment, depending on the user's preference to do so if he/she does not wish to remove the altering device from the pocket.

For claim 22, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of wrapping the cover of Beeghly et al. around the outer thigh and the inner thigh of the animal, depending on what area of the animal's body needs temperature treatment.

For claim 24, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of repeating the steps of altering the temperature of the animal cover of Beeghly et al. and placing the cover on the body of the animal, depending on the condition of the animal to be treated.

6. **Claims 13-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. (as above) in view of JP10113088 (herein JP088).

For claim 13, JP088 teaches an animal cover comprising cavities 2 that are adjustable (by using VELCRO 32) about different areas of the animal's body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide VELCRO as taught by JP088 on the pockets of Beeghly et al. in order to allow a user to move or adjust the pockets to different areas of the cover.

For claim 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cavity for delivering temperature altering regimen to the stifle being located on a flap of the body of the cover of Beeghly et al. as modified by JP088, the flap wraps from the outer thigh around to the inner thigh and is adjustably attached to the buttock/croup area of the cover, depending on what area of the animal's body needs temperature treatment.

For claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cavity for delivering temperature altering regimen to the stifle being located on a flap of the body of the cover of Beeghly et al. as modified by JP088, allowing for optimal positions of the temperature altering device between the stifle joint and the abdomen/groin area of the animal, depending on what area of the animal's body needs temperature treatment.

Response to Arguments

7. Applicant's arguments filed 4/29/05 have been fully considered but they are not persuasive.

Applicant argued that Beeghly et al. do not disclose (1) strategically located cavities, (2) there is not one mention of the animal's anatomy with respect to the location of the pockets, (3) the pockets are not adjustable, (4) the temperature altering device only delivers heat and not a temperature altering device because a temperature altering device refers to both the increase and the decrease of a temperature.

In response to (1), Beeghly et al.'s do teach strategically locating the cavities as shown in the figures. Those cavities are not everywhere on the cover and they are specifically at certain location on the body, thus, making them "strategically located".

In response to (2), Beeghly et al. clearly show the locations of the pockets as can be seen in the figures. There is no need to even mentioned the locations because one of ordinary skill looking at the Beeghly reference would realize that the pockets are placed on the side, the girth, etc. of an animal.

In response to (3), Applicant's argument for claims 1-12,16-26 regarding Beeghly not teaching adjustable pockets is moot because these claims do not even claim adjustable pockets. Only claims 13-15 pertain to adjustable pockets, which Beeghly is combined with JP088 for the teaching.

In response to (4), Beeghly's altering device is like a heat pad or a cool pack. The temperature will decrease over time since the original temperature will not last forever or will cool off, thus, the altering device of Beeghly is a temperature altering device like that of Applicant.

Applicant argues that there is no indication that these pockets are adjustable, allowing for the precise targeting of a particular anatomy of the horse. Similarly, it is not disclosed in DE260, how these pockets could be adjusted so that the shoulder pocket would directly hit the shoulder of a variety of differently sized horses. The pockets of the DE260 blanket, therefore, can only come in close vicinity of the shoulder of a variety of differently sized horses, and fail to precisely hit the shoulder as required.

Applicant's argument for claims 1-12,16-26 regarding DE260 not teaching adjustable pockets is moot because these claims do not even claim adjustable pockets. Only claims 13-15 pertain to adjustable pockets, which only Beeghly is combined with JP088 for the teaching and not DE260. In addition, the claim language does not state precisely hitting the shoulder. The claim language merely states an area of the animal selected from neck, withers, spine, shoulder, etc., which does not indicate or is not the same as precisely hitting the shoulder as argued. Even if so, it would have been obvious for one of ordinary skill in the art to apply the temperature altering device therein the pockets to any desire parts of the animal body's depending on where the animal needs heating or cooling.

Applicant argues that the Examiner is of the opinion that the DE260 reference teaches the method of delivering a temperature-altering regimen as described in the current application. Applicants traverse Examiner's rejection and respectfully request that the rejection is withdrawn and the claims allowed.

The heat pad of DE260 is a temperature altering regimen because the heat pad will lose its temperature over time, thus, making it a temperature altering device.

Applicant argues that there is no disclosure in JP088 that the cooling materials are adjustable. Further, JP088 teaches only the cooling of the head of a horse, and more specifically, the forehead region of the horse, and the cooling of the neck of a horse.

Clearly from the figures, one can tell that the pockets 2 are adjustable by the use of VELCRO 32. In addition, in the abstract of JP088, it states that pockets 2 are "freely

attachably and detachably attached to the required parts". Furthermore, cooling the head and neck of JP088 is the same as claimed by Applicant (see claim 4, for example). In any event, JP088 is relied upon for the adjustable feature of the pockets and not cooling certain region of the body.

Applicant argued that there is no motivation to combine references.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine Beeghly in view of JP088 is to allow a user to move or adjust the pockets to different areas of the cover. By having the pockets of Beeghly adjust using the teaching of JP088 does not alter the invention of Beeghly because it just simply allows a user to attach or detach the pockets at various areas as applicable. The device of Beeghly still does the same function to cool or heat the animal in different areas of the animal's body.

Applicant argued that the Examiner improperly using hindsight to reject Applicant's invention.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Son T. Nguyen
Primary Examiner
Art Unit 3643

stn